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Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

CHRISTOPHER CARTY,)	Case No. 3:05-cv-253-JKS
)	
Plaintiff,)	
)	ANSWER TO COMPLAINT
vs.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	
_____)	

COMES NOW the United States of America and using the same numbering of paragraphs and sentences in Plaintiff's Complaint, admits, denies and alleges as follows:

PARTIES AND JURISDICTION

1. The averments of Paragraph 1 amount to a legal conclusion as to which no response is required.
2. Defendant admits that Plaintiff filed an administrative tort claim with the Department of Health and Human Services on October 14, 2004, and that more than six months have passed since DHHS received the claim, but denies the remaining averments of Paragraph 2.
3. Defendant is without knowledge or information sufficient to admit or deny the averments of Paragraph 3.
4. Defendant admits that, at all times relevant to the complaint, the Alaska Native Medical Center was providing medical services pursuant to a compact between the Indian Health Service and the Alaska Native Tribal Health Consortium (“ANTHC”), which is governed by the Indian Self-Determination and Education Assistance Act of 1975, Public Law 93-638, 88 Stat. 2203, Jan. 4, 1975, codified at 25 U.S.C. §§ 450a to n.

COMMON FACTUAL ALLEGATIONS

5. Defendant admits that on October 2, 2002, Dr. John Lapkass and Dr. Jeffrey Parker, physicians employed by the ANTHC, performed right hip

replacement surgery on Plaintiff at ANMC.

6. Defendant admits that Plaintiff exhibited symptoms of nerve damage following his surgery of October 2, 2002, but is without knowledge or information to admit or deny the remaining averments of Paragraph 6.
7. Denied.
8. Defendant admits only that, between May 29, 2002, and March 6, 2003, Plaintiff received medical treatment from ANTHC employees John E. Lapkass, M.D., Jeffrey C. Parker, M.D., and David Barrett, M.D., and from South Central Foundation employee, Tim Scheffel, M.D.
9. Denied.

COUNT I - NEGLIGENCE

10. Defendant incorporates by reference its responses to Paragraphs 1 through 9 above as if fully set forth herein.
11. The averments of Paragraph 11 amount to a legal conclusion as to which no response is required.
12. Denied.
13. Denied.

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Any injuries or damages sustained by Plaintiff, were due in whole or part to his own negligent acts or omissions, or those of others, known or unknown, over whom the federal government had no control.

THIRD DEFENSE

If Defendant United States was negligent, which is expressly denied, others were also negligent. Defendant may thus only be held liable for its proportionate share of the fault, if any. Alaska Stat. § 09.17.080.

FOURTH DEFENSE

Defendant's liability, if any, is subject to the limitation on non-economic damages set forth in Alaska Stat. § 09.17.010.

FIFTH DEFENSE

The court lacks subject matter jurisdiction because Plaintiff failed to comply with the FTCA's statute of limitations 28 U.S.C. § 2401(b).

WHEREFORE, Defendant United States prays that the Court dismiss Plaintiff's Complaint with prejudice, and enter judgment in its favor together with the costs of this action.

RESPECTFULLY SUBMITTED this 28th day of April, 2006.

DEBORAH M. SMITH
Acting United States Attorney

s/ Susan J. Lindquist
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CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2006,
a copy of the foregoing Answer to Complaint
was served by U. S. Mail on:

Myron Angstman
Angstman Law Office
P O Box 585
Bethel, AK 99559

s/ Susan J. Lindquist